COMMONWEALTH CLUB

SAN FRANCISCO, CALIFORNIA

CHIEF JUSTICE RONALD M. GEORGE

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Good evening. It is a great pleasure to join you, and I want to thank the Commonwealth Club for inviting me here once again to speak with you.

My first appearance before you was in February of 1997, less than one year after I became Chief Justice of California. Although on that occasion I spoke on the subject of access to the courts — a theme that I intend to touch upon again today in speaking about ensuring judicial independence — rest assured that I do not intend to repeat myself.

California's court system has undergone so many developments and innovations since then, that I shall be able to mention only a few of them in the time allowed.

In reviewing my earlier remarks in preparation for today's event, I was struck by several things. First and foremost, the problem of ensuring adequate meaningful access to all who need the services of the courts still presents many challenges, but solid and encouraging progress has been made. Second, the financial and structural background against which my earlier remarks were projected has changed enormously. Third, in those earlier remarks I worried about the creation of a two-tiered system of justice — one for those who could afford to select

and pay their preferred arbiter, and the other, the public system, left for dealing with criminal matters and the cases of those unable to afford the private adjudicator of their choice. That dichotomy remains a substantial concern.

And finally, in reflecting upon access to the courts today, one is confronted with the question not only of the public's ability to effectively use the services of the courts — but also of what the future holds for the ability of the courts themselves to effectively and independently administer justice.

When last I spoke to you, I was midway through a series of visits to the courts in each of California's 58 counties that I had pledged to make in the first of what has become my annual State of the Judiciary

address to a joint session of the California Legislature.

The existing system for financing the operations of the trial courts, split between the counties and the state, had led to dramatic variations in the quality of justice being dispensed by courts up and down the State of California. In counties in which the local court's relationship with the board of supervisors historically had been a good one, and the local economy and tax base were doing well, many courts had grown accustomed to relatively comfortable funding levels. Increasingly, however, many of these courts were encountering resistance to their budget requests. In counties with the opposite circumstances, poor court-county relationships or a

struggling local economy, the courts often found themselves scrambling to provide basic services to the community in competition with health clinics, libraries, and other entities for scarce county funds.

Not too surprisingly, the split funding system also meant neither funding source — the state nor the counties — ultimately considered itself responsible for the overall health of the judicial system. By early 1997, more and more courts were beginning to reduce services — sometimes drastically. Clerk's office hours were shortened, some courtrooms went dark, and employees faced lay-offs. In at least one instance, the situation was so dire that at the last minute a check had to be rushed to a local courthouse to enable it to meet the

next day's payroll. There were increasing delays for the public in everything from paying a traffic ticket to updating arrest files to having a hearing or getting a warrant cleared. Twice during my first year as Chief Justice, I had to obtain emergency bail-out money from the Legislature to keep various courts from closing down major portions of their operations and laying off court staff.

At our urging, the Legislature passed and the Governor signed the Trial Court Funding Act of 1997, and today our state court system is fully state funded. This was only the first of a number of extraordinary structural reforms in the judicial branch that have occurred during the past 9 years —

all of which have made a material difference in how the courts are able to dispense justice.

This new funding approach — involving a judicial branch budget of approximately $3 billion — requires the state to provide necessary resources for the trial courts — a notion that seems elementary when you consider the integral role of the judicial branch in our government, but one that took decades to accomplish.

The state's assumption of the responsibility for the courts has produced many of the benefits anticipated. Funding has become more secure and adequate in all counties. Courts can plan effectively for the future. Our system can focus on ensuring a consistent level of service statewide — tailored to fit

local needs. Technological improvements can be instituted so that the court system will be able to communicate effectively not only internally, but also with other parts of state and local government such as the Department of Motor Vehicles, prosecutors, public defenders, social services, and the Department of Justice. Pilot projects exploring everything from self-help centers to complex litigation courts can be funded and coordinated, and the results and best practices can be easily disseminated statewide.

However, state funding does not, and cannot, mean a cookie cutter approach to administering justice. California presents extraordinary challenges to effective statewide governance of the courts. We

must balance the need for courts to be responsive to local needs, with the importance of dispensing justice equally across the state.

This is not always easy. Our courts are located in 58 counties ranging in size from Alpine with fewer than 1,200 residents and the minimum number of judges — two — to Los Angeles, with just under 10 million residents and 583 judges and court commissioners. More than 100 languages are translated in California's courts every year — ranging literally from "A" to "Z," from Albanian to Zapotec. Agricultural counties, deserts, mountainous areas, and densely populated urban centers — California has them all.

As Chief Justice, I chair the Judicial Council, the constitutionally created body charged with setting statewide policy for the courts. As the state's overall responsibilities for the courts have increased, the judicial branch has taken steps to ensure that we are accountable for the resources provided us and follow a statewide approach to improving the administration of justice and increasing meaningful access to the courts for all Californians.

Our ability to meet these goals also was furthered by our second major structural reform — a constitutional amendment overwhelmingly adopted by the voters in 1998, less than one year after the switch to state funding. This measure permitted the two levels of trial courts, municipal and superior, to

merge into a single unified trial court level on a county-by-county basis. In less than 4 years, the courts in every county opted to unify — reducing the number of trial courts in California from 220 to 58, one Superior Court in each county — and permitting the courts to make better use of all available judicial and staff resources in serving the public.

Since the early 1990's, the Judicial Council has placed improving access and fairness highest on its list of priorities. State funding and trial court unification have proved invaluable in providing support and flexibility so that courts can experiment with and implement new means to reach out to the public and be responsive to public needs.

For example, due in large part to court unification and the resulting flexibility in using judicial resources, many courts have found they can dedicate more courtrooms to drug courts, domestic violence matters, and juvenile mental health courts. These specialized courts provide expanded and targeted services.

We also have engaged in jury reform — increasing the compensation and services provided to jurors, switching to a system of one-day-or-one-trial jury selection, and devising hundreds of new, plain-language jury instructions on the law, replacing the trial judge's often complex and difficult-to-understand instructions written in legalese.

Self-represented litigants are an ever-increasing proportion of the individuals who come to the courts — particularly in family law matters. In some areas of the state, in as many as two-thirds of these vitally important cases — involving child custody, child support, divorce, and domestic violence — neither side has legal representation.

Today, a family law courtroom may look very different from our traditional image of the courtroom — with crowds of litigants, clutching their papers, and no counsel standing by. The judge must preside over numerous matters in which often confused members of the public try to cope with an arcane system they may not really understand. Emotions often run high, exacerbated by the absence

of counsel and frustration with what may seem like incomprehensible procedural requirements.

Many individuals simply cannot afford a lawyer — and cannot qualify for low or free legal assistance. Others may qualify, but have no idea where to turn. Courts have tried to meet the needs of these self-represented litigants by using different strategies. Legal aid providers and attorneys who offer pro bono assistance make remarkable contributions — but there simply are not enough services available for all those who need them.

As a result, courts have adopted a variety of services to help those who cannot find help elsewhere. For example, several courts have installed self-help kiosks to assist individuals in

selecting and filling out simplified court forms. Many courts, in cooperation with local bar associations, offer a range of services supplying lawyers and paralegals to assist self-represented litigants with basic procedures. Family support coordinators are located in every courthouse. Although the list of services provided is long — ranging from self-help centers, simplified forms and procedures, and in some counties mobile vans providing legal services to outlying areas — the need for assistance remains acute.

Significant barriers to justice may be far more than physical or economic. They may include language, unfamiliarity with the system, lack of education, and discomfort or unfamiliarity with

government, or bad experiences with the justice system in another country. These barriers may profoundly affect an individual's family, residency, work environment, ability to obtain public benefits, and generally the opportunity to vindicate the person's rights and seek appropriate redress or relief.

To obtain a fuller picture of the wide-ranging innovative services being provided to the public by California's court system, I invite you to inspect the court system's award-winning website, located at *www dot courtinfo dot ca dot gov*. While you are there, I suggest that you look at the information concerning the Center for Families, Children, and the Courts, a nationally recognized resource for improving services to the most vulnerable members

of our society, established by the Judicial Council as part of the Administrative Office of the Courts. The entire website is accessible in Spanish, and parts have been translated into other languages, including Chinese, Japanese, and Korean. The center encourages programs such as CASA — the Court-Appointed Special Advocate program, which is run at the local court level. Under that program, an individual is appointed to advocate one-on-one for the interests of a child who is in the juvenile system because of neglect, abuse, or abandonment.

The Judicial Council has, for the past two years, held public sessions to learn more about the direct effect of many of the assistance programs sponsored and encouraged by the Council, the Administrative

Office of the Courts, and local courts. I know that all of us who attended a recent hearing will never forget the story told by one young lady and her court-appointed advocate. At an early age, she was left to take care of even younger siblings because of her father's and mother's drug and alcohol dependency. She began to follow her parents' example in her teens, running into trouble with substance dependency, truancy, and petty crimes.

The CASA volunteer appointed to work with her stood by her through rehabilitation and relapse, educational successes and failures, and sat beside her that day as she explained to us that she is now working at the very therapeutic program that had helped provide her with a vision of life different

from that of her parents. She attributed her success to the steadfast support, caring, and encouragement of this one volunteer, appointed through the CASA program, who was there for her and believed in her.

The story she told, about how one person can make a difference in a child's life, may sound familiar. But hearing directly from this person whose life has been dramatically changed was an extraordinarily powerful experience that reminded us that behind what may seem like clichés is the truth that courts can have a profound effect on the lives of the persons appearing before them, far beyond the confines of traditional court proceedings.

The court website to which I referred earlier includes a remarkable self-help website that offers a

wide range of information on various court proceedings and related court forms, in subjects such as family law, evictions, name changes, and guardianships. It has everything from where the court is located, to what to expect when you go to the courthouse, and receives millions of hits each year. One of its prominent features is a guide to obtaining a protective order. It is far from a dry legal description of the appropriate procedures for filing the papers necessary to make a motion and obtaining an order; it includes information such as the location of the nearest domestic violence shelter.

Drug courts similarly go far beyond the traditional role of the courts. In cooperation with the district attorney's office, defense counsel, the

probation office, and local social services providers, these courts oversee a program tailored to the individual defendant and aimed at helping him or her get off drugs and regain a useful role in society — often by obtaining employment, overcoming health problems, and reuniting families.

I have attended graduations in some of these courts — events that provide vivid and moving reminders of how an individual life can be turned around through our branch's willingness to expand our services beyond the confines of the formal legal model.

As you can see, there are projects going on in every part of the judicial branch to improve access to justice. The reforms that I mentioned at the outset

have been essential in giving rise to this burst of innovation. Stable and adequate funding are fundamental, as is flexibility in employing resources to respond to the current needs of the public we serve.

The third and most recent fundamental structural reform undertaken by our court system was authorized by the Trial Court Facilities Act of 2002. This measure provides for the transfer of ownership of the 451 courthouse facilities in California from the counties to the state — under judicial branch management. The transition is underway and will take a few years to complete, funded by filing fees and court-generated revenue, but the unsafe condition of many of our courthouses and the lack of

adequate facilities will require us to seek help from the public through a bond measure in 2006 or 2008. There presently are judges, lawyers, staff, litigants, witnesses, jurors, and visitors to our courthouses who every day enter many facilities that we know will not withstand even a moderate earthquake. Recent stories in the San Francisco Chronicle have highlighted serious concerns about the structural integrity of the Hall Justice here in this city.

In other courthouses, in-custody defendants must be walked through public hallways to get to the courtroom. In some, there is no jury waiting room. In many others, there is inadequate money for security screening. Shootings in courthouses are all too common nationally and occur here in California,

and — sometimes, it seems — all too foreseeably. A few years ago, I arrived at the main Los Angeles courthouse as blood was being mopped up from a corridor after a fatal shooting related to a family law matter. Many years ago, a juror serving in a case over which I was presiding as a trial judge was stabbed to death in the courthouse restroom. A dispute over money, child custody, a business deal, or a claim of discrimination — all of these issues can (and do) inflame emotions. We must be able to provide a secure environment for all those entering our courthouses.

Now that the state has responsibility for funding the trial courts, it is reasonable that it also assume the responsibility for housing court services.

Counties — with many competing demands on their resources — understandably may not place funding for state-sponsored services at the head of their list of priorities.

As you can tell, the judicial branch in California has been active and innovative — and dedicated to preserving a strong and independent judiciary capable of providing fair and accessible justice to all.

I have emphasized the structural changes we have made because, in my view, they are integral to maintaining an independent judiciary. In speaking of an independent judicial system, the discussion typically focuses on the ability of courts to make decisions free from inappropriate influence or

bias — what is called "*decisional* independence." I shall speak more about that in a moment, but I also want to address the importance of the other half of the equation — the need for "*institutional* independence" of the judicial branch.

Alexander Hamilton in the Federalist Papers No. 79, discussing the need for a fixed provision for the support of the judiciary, observed that "In the general course of human nature, a power over a man's subsistence amounts to a power over his will." The desire to avoid this type of incursion on judicial independence led to the federal constitutional provision, echoed in our own state constitution, barring the diminution of a judge's salary during his or her term in office. But the

support of the court system involves far more than the salary of judges — and history has shown that sometimes, a court decision may lead to threats of fiscal retaliation against the judiciary's budget by those in other branches of government who disagree with the court's action.

That is not, of course, the only form of reprisal that has been suggested by those who take issue with court decisions. But it is a potent threat, because courts have no independent means to raise and collect money to keep the courthouse doors open.

The advent of state funding and unification, and the assumption of greater responsibilities for the statewide administration of justice, have enabled the judicial branch to act with greater administrative

self-sufficiency and cohesion — and thus to lend more concrete support to the role of the judiciary as a full-fledged and effectively functioning third branch of government. At the same time, we have adopted strategies and mechanisms to ensure accountability to the public and our sister branches in our management of resources. By enhancing institutional independence, we believe we have placed the judicial branch in a better position to advance its primary role in our governmental system — namely independent decisionmaking.

Current events vividly illustrate that ensuring decisional independence is not a task to be taken lightly or for granted.

Access to justice presupposes a court system that can fairly decide the claims and disputes brought before it. Judicial independence traditionally has meant that courts make determinations based upon applicable constitutional and statutory provisions and judicial precedent.

Members of the legislative and executive branches rightfully are expected to be responsive to current public preference, taking public opinion into account in deciding how to proceed. Judges, however, are supposed to avoid being influenced by such forces. This is not to say that judges do not bring their own personal histories and attitudes to the bench — but it is to say that in rendering their decisions, judges are expected to look at what the

law requires and not at what outcome they might prefer.

The law is an inexact science. It is a creature of language and of all the ambiguity and uncertainty that language involves. Imperfect though it may be, the rule of law is the very essence of our society and something that distinguishes our democracy from so many other forms of government. It provides predictability, offers the promise of equality, and makes fairness not only possible but real. Application of the rule of law does not — and must not — depend upon whom you know or how much money or power you have. It is an ideal to strive for, and an independent judiciary is at the heart of achieving it.

Recent events and studies, however, suggest that this vision of the judicial function is not universally held or understood. Last July, for example, the Harris Poll organization undertook a poll on civics for the American Bar Association. The first point of the Executive Summary of the results states: "The majority of Americans could use a civics refresher course." This conclusion is not surprising when one considers the following findings. Only 55 percent of the respondents to the survey could correctly identify the three branches of government: executive, legislative, and judicial. More than one in five believed that the three branches of government are the Republicans, the Democrats, and the Independents.

Only 48 percent could correctly identify what is meant by the concept "separation of powers." Again, less than half could correctly identify the judiciary's role in the federal government — almost 30 percent describing the role of the judiciary as advising "the President and Congress about the legality of an action they intend to take in the future."

With this background, it is not surprising to find that the role of an independent judiciary, one that is free from inappropriate partisan and other pressures, often is not fully understood. And recent pronouncements by some in positions of power in the other branches of government — and even in the judiciary — in my view add to the confusion and the

potential for undermining what is a crucial feature of our democratic system of government.

The actions taken by Congress during the Terry Schiavo tragedy provide one example. The courts — in Florida and up the chain in the federal system — refused to listen to calls from Congress, the Executive Branch, and others, to overturn the Florida lower court ruling, made after a full hearing, upholding Ms. Schiavo's husband's power to make decisions concerning her future.

Robert Grey, Jr., then president of the American Bar Association, aptly described the role of the judges involved when he observed: they are "not killers as some have called them, nor are they activists bent on pushing an ideological agenda.

They are simply dedicated public servants, called on to serve as impartial arbiters in a very difficult case. Instead of maligning them for applying existing law to the case at hand, even though it may not reflect the current will of Congress, we should praise them for dispensing even-handed justice and upholding the independence of the judiciary even under the most difficult circumstances."

The circumstances surrounding the Schiavo case unfortunately have proved to be far from unusual. We expect criticism of judicial decisions — reasoned critiques are an important part of the discourse that makes our nation great. California's judicial branch only recently conducted a survey of public attitudes concerning the court system in order

to learn more about public perceptions and about areas in which we could and should make improvements to better serve the community.

Nevertheless, some recent events illustrate that the very concept of the impartial and objective judicial role that has provided the traditional framework for discussions and inquiries concerning our court system seems itself to be under fundamental attack. Those who disagree with a judicial decision at times will criticize the result in terms of political considerations rather than on the basis of the legal analysis contained in the court's opinion.

When Pennsylvanians went to the polls last Tuesday, among the matters on the ballot was the

retention of two members of the state Supreme Court for 10-year terms. Four months earlier, legislators had enacted a pay raise for themselves, to the great dismay of many citizens of the state. However, no legislators were on the upcoming ballot to provide a target for disgruntled voters. Instead, some groups turned their ire toward the judges, arguing that they had benefited from the legislative vote, which granted them raises as well, although they themselves had not voted on the issue.

According to an article in the New York Times, leaders of the movement to repeal the pay raises characterized the judges as "dupes of the legislature." The Times stated that "rather than attacking the justices as too meddlesome in

legislative affairs, people are complaining that they have not done enough." Some voters stated that they would vote "no" on the judges in order to "send a message." And a local county party chairman explained that "most importantly, this was a symbolic move." One of the Pennsylvania Supreme Court justices lost his seat and the other narrowly retained her position.

I do not know the details of these races, nor am I familiar with the record of the two justices. But in reading media reports, I was struck by the irony of judges being challenged because of action taken by the legislature — and because of the judges' asserted failure to intrude upon the legislative process.

This claim of judicial passivity stands in sharp contrast to more familiar claims of judicial activism. And the latter term often seems to be synonymous with subjective disagreement with a decision that a court has reached, no matter what the basis for the decision or the reasoning employed by the judges.

Another example: I am a member and past president of the Conference of Chief Justices, an organization comprised of the leaders of the state and territorial court systems of our nation. The subject of judicial independence is of course one that is high on our list of priorities, and we monitor developments in this area and seek ways to better inform the public about the meaning and importance

of this fundamental precept in our governmental structure.

After our most recent meeting, I received a mailing from the Chief Justice of South Dakota, following up on a conversation we had on the subject. He sent me copies of a proposed amendment to the South Dakota Constitution, and information about mass mailings sent to every business in the state, together with recent news articles about this measure. The proponents are using paid circulators to gain signatures to put their amendment on the ballot. I will not go into all the details of the proposal, but I will describe a few key provisions. It would remove judicial immunity — a long-standing principle that provides protection for

judges from suit based upon their actions taken in the course and scope of their duties as a judge. It would create a "special Grand Jury," a 13-member group charged with reviewing civil lawsuits against judges to determine whether they are frivolous or harassing, and with the power to indict judges for criminal conduct based upon their judicial decisions.

The proponents' declared purposes include ensuring that "judges will be held accountable for malfeasance of office for lenient treatment of criminals," as well as creating "a mechanism wherein the people can override 'judicial immunity' and punish wayward judges with civil suits and even criminal charges. After three adverse rulings — the equivalent of a "Three Strikes" Law applicable to

judges — incorrigible judges would be banned for life from holding any judicial position." Traditional appellate review to correct judicial errors apparently would recede to the background — if it survives at all.

According to the South Dakota Chief Justice, "these folks have plenty of money," and "They have obviously chosen South Dakota because they think it would be an inexpensive state to get the ball rolling." He advises that the movement apparently started here in California and describes itself as the Judicial Accountability Initiative Law, with the none too subtle acronym J.A.I.L.

This may seem a farfetched attempt at challenging judicial power, but rhetoric accusing

judges of activist rampages against constitutional rights and thwarting the public will can be heard from many quarters. And the partisan politicization of the judiciary and of the role of the courts, whether in the debate on nominees to the United States Supreme Court or in local judicial election races, is a growing and deeply troubling trend.

As I stated earlier, judges naturally bring their own histories and attitudes to the bench with them. Historically, however, the function of the judicial branch has been considered apolitical — in contrast to its political sister branches. In my view, the increasing focus on requiring declarations of partisan preferences and of beliefs severely undermines the concept of judicial decisionmaking in the course of

the application of existing law to the facts at hand. It contradicts the principle that judges, once on the bench, must look to the law, and not to the latest political trends, in making their decisions.

As Hamilton reaffirmed in No. 78 of the Federalist Papers, discussing the powers of the judicial branch: "there is no liberty if the power of judging be not separated from the legislative and executive powers." He cited permanency in office for judges as an essential means to avoid the judicial branch "being overpowered, awed or influenced by its co-ordinate branches."

Modern lawmakers have not been reticent about attempting to overstep in that manner, whether it is in the hurried legislation enacted as part of the

Schiavo saga, or threats to strip federal courts of jurisdiction in certain areas because of disagreement with judicial decisions. Bills have been introduced to accomplish just that. For example, one measure now pending in Congress, the Streamlined Procedures Act, radically diminishes the use of the Great Writ, the writ of habeas corpus, in the federal courts to correct state court errors. Opponents include the Conference of Chief Justices, the Judicial Conference of the United States, several former attorneys general and federal judges (two of them former F.B.I. directors), scholars, and lawyers familiar with the subject. The measure is still, however, under active consideration.

Partisan political elections for judicial office pose particular hazards for the independence of the judiciary. For example, Texas is one of seven states that elects all of its judges by partisan ballot. Candidates run against each other as Republicans and Democrats for seats on the various state courts, including the supreme court, backed by competing special interests. A recently retired Chief Justice of the Texas Supreme Court, who strongly opposes partisan judicial elections, observed that Texas was "probably the first state in the nation to make judicial races as expensive as hotly contested regular political campaigns." Unfortunately, partisan judicial elections in other states, such as Ohio, raise similar concerns.

What are the implications of this type of judicial election? One report from a group called Texas for Public Justice related in 1998 that a survey undertaken by the Texas Supreme Court itself "found that nearly half of the judges themselves thought that campaign contributions significantly affect their decisions."

As you can see, the concept of an independent judiciary, while constantly invoked, is not always consistently understood or applied.

In my view, our commitment to improving access to justice for all will be meaningless unless we also are committed to preserving the kind of system of justice to which it is worth having access. Both sides of this equation require public education

and support. If justice is available only to certain segments of society, we are not fulfilling the vision of the Founders and the mandates of our democratic system of government.

We must demand an independent judicial branch untethered from partisan pressures. The judiciary must be capable of fulfilling its role in the process of checks and balances among the three branches of government as envisioned by the Founders of our nation and our state. There are numerous examples in history of the dangers of a judicial branch beholden to partisan interests. Fascism, communism, and every form of totalitarianism has sought a weakened judiciary, subject to political

pressure, as one of the first tools to be employed in bolstering the power of the government.

The role of the judicial branch has moved to the forefront in today's political debates. As members of the Commonwealth Club, you share an abiding interest in current events and in political and societal trends. As informed, interested, and educated members of the public, I encourage you to keep informed about the judicial system, its vulnerable role in our system of government, its efforts to reach out to the greater community, and the challenges it faces.

California's judicial system is the largest in the nation (and perhaps anywhere), with more than 1,600 judges and approximately 400 court

commissioners — much larger than the federal court system nationwide. Each year, millions of matters are heard and disposed of in California's courts. We have been most fortunate to have individuals on our state bench striving to render justice fairly, objectively, and effectively. Your participation in the debate about the role of the judiciary will be important in maintaining our state's tradition of providing fair and accessible justice to all. I hope you will continue to focus on this crucial issue and contribute to the discussions concerning the proper role of the judiciary in our society.

Thank you again for inviting me to join you today. And now, I would be pleased to answer questions — with the qualification that under the

California Code of Judicial Ethics, I cannot discuss pending cases or legal issues that may come before the courts.

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